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Election of judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

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Memorandum by the Secretary-General

I. Introduction

1. By its resolution 827 (1993) of 25 May 1993, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 and to adopt the Statute of the Tribunal annexed to the report of the Secretary-General prepared pursuant to Security Council resolution 808 (1993) of 22 February 1993 (S/25704 and Corr.1).

2. Elections for the permanent judges of the Tribunal last took place in 2001. The terms of office of the 14 permanent judges who were elected in those elections are due to expire on 16 November 2005.

3. Pursuant to subparagraph 1 (a) of article 13 bis of the Statute of the Tribunal, as amended by the Security Council in its resolution 1329 (2000) of 30 November 2000, the Acting Legal Counsel, on behalf of the Secretary-General, invited, by circular letter of 15 July 2004, all States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations for permanent judges of the Tribunal. In accordance with subparagraph 1 (b) of article 13 bis of the Statute, each State was invited to nominate, within 60 days of the date of the invitation, up to two candidates, no two of whom were to be of the same nationality.

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4. The 19 nominations that had been received by the Secretary-General within the period stipulated in subparagraph 1 (b) of article 13 bis of the Statute were forwarded by the Secretary-General to the President of the Security Council, in accordance with subparagraph 1 (c) of article 13 bis, by means of a letter dated 21 September 2004 (S/2004/754). In that letter, the Secretary-General noted that the number of candidates whose nominations had been received was short of the minimum number of candidates who, in accordance with subparagraph 1 (c) of article 13 bis of the Statute, were to make up the list which the Security Council was to establish for transmission to the General Assembly.

5. Subsequent to the letter of the Secretary-General of 21 September 2004 (S/2004/754) the Legal Counsel submitted to the Council nominations received after that date and that in accordance with the article 13 bis, subparagraph 1 (b), which were not submitted in time but which the Security Council might wish to consider receivable and to include in the list that it was to establish for transmission to the General Assembly. At its 5057th meeting on 14 October 2004, the Security Council, in accordance with subparagraph 1 (d) of article 13 bis of the Statute of the Tribunal, decided to forward a list of 22 candidates to the General Assembly. The Council adopted the list in its resolution 1567 (2004) of 14 October 2004 and formally conveyed it to the President of the General Assembly by means of a letter dated 14 October 2004 from the President of the Security Council (A/59/437).

6. The list of candidates for permanent judges and the procedure for the election of the permanent judges of the International Tribunal are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document.

II. List of candidates for permanent judges of the Tribunal

7. The list of candidates for permanent judges of the Tribunal is as follows:

Mr. Carmel A. Agius (Malta)

Mr. Jean-Claude Antonetti (France)

Mr. Iain Bonomy (United Kingdom)

Mr. Liu Daqun (China)

Mr. Mohamed Amin El-Abbassi El Mahdi (Egypt)

Mr. Elhagi Abdulkader Emberesh (Libyan Arab Jamahiriya)

Mr. Rigoberto Espinal Irias (Honduras)

Mr. O-gon Kwon (Republic of Korea)

Mr. Theodor Meron (United States of America)

Mr. Bakone Melema Moloto (South Africa)

Ms. Prisca Matimba Nyambe (Zambia)

Mr. Alphonsus Martinus Maria Orie (Netherlands)

Mr. Kevin Horace Parker (Australia)

Mr. Fausto Pocar (Italy)

Mr. Yenyi Olungu (Democratic Republic of the Congo)

Mr. Sharada Prasad Pandit (Nepal)

Ms. Vonimbolana Rasoazanany (Madagascar)

Mr. Patrick Lipton Robinson (Jamaica)

Mr. Wolfgang Schomburg (Germany)

Mr. Mohamed Shahabuddeen (Guyana)

Ms. Christine Van den Wyngaert (Belgium)

Mr. Volodymyr A. Vassylenko (Ukraine)

III. Procedure for the election of permanent judges

8. The election of permanent judges will take place in accordance with the following provisions:

(a) Article 13 and article 13 bis of the Statute of the International Tribunal, as amended;

(b) Given the similar nature of the election of judges of the International Court of Justice and the election of judges of the Tribunal, it was decided at the time of the previous elections of judges in 1993, 1997, 1998 and 2001 to follow similar election procedures in the General Assembly. The Secretary-General suggests that these precedents be followed and that rule 151 of the rules of procedure of the General Assembly be applied to the election of permanent judges of the Tribunal.

9. In accordance with subparagraph 1 (d) of article 13 bis of the Statute of the Tribunal, the Holy See, being a non-member State which maintains a permanent observer mission at United Nations Headquarters, will participate in the election in the same manner as the States Members of the United Nations.

10. On the date of the election, the General Assembly will elect 14 permanent judges from the list of candidates submitted to it by the Security Council.

11. According to article 13 of the Statute of the Tribunal, as amended, permanent judges of the Tribunal shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. According to that same provision, due account shall be taken in the overall composition of the Chambers of the Tribunal of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

12. In accordance with subparagraph 1 (d) of article 13 bis of the Statute of the Tribunal, as amended, the candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

13. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly for current purposes are all 191 Member States, together with the one non-member State mentioned in

paragraph 9 above. Accordingly, 97 votes constitute an absolute majority in the Assembly for the purpose of the present election.

14. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote in the first ballot for no more than 14 candidates.

15. If, in the first ballot, the number of candidates obtaining an absolute majority is less than 14, a second ballot will be held, and balloting will continue in the same meeting, if and as necessary, until 14 candidates have obtained an absolute majority. In any second or subsequent ballot, each elector may vote for no more than 14 candidates less the number of candidates who have already obtained absolute majorities.

16. Following the practice in the election of judges of the International Court of Justice, any second and subsequent balloting shall be unrestricted. Votes may accordingly be cast in any second or subsequent ballot for any eligible candidate who has not yet obtained an absolute majority.

17. If, in the first ballot, more than 14 candidates obtain an absolute majority of votes, a second ballot will be held on all candidates, and balloting will continue at the same meeting, if and as necessary, until 14 candidates, and no more, obtain an absolute majority. In any such case, each elector may vote, both in the first ballot and in any subsequent ballot, for 14 candidates.

18. When 14 candidates obtain the required majority, the President of the General Assembly shall declare the candidates concerned elected.